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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/677,029

10/01/2003

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EXAMINER

TRAN LIEN, THUY

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

04/16/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/677,029	Applicant(s) GOEDEKEN ET AL.	
	Examiner Lien T. Tran	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 18-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 18-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/18/08, 3/4/04</u> . | 6) <input type="checkbox"/> Other: _____ |

Claims 1-2, 5,7-8,10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Freyn et al.

Freyn et al disclose an unproofed frozen dough comprising an acidic active agent, a basic active agent and yeast in amount of 2-20% . The dough products include dinner rolls, bread stricks, cinnamon rolls. The acidic active agent can be selected from the ingredients listed on column 2 lines 50-60. The frozen dough does not need to be thawed or proofed prior to baking; however, the dough may be thawed and proofed without detracting from the quality of a baked product. The method comprises the step of determining amount of ingredients to form the dough. (see col. 2 and col. 5)

The reference discloses all the limitations claimed. The property of being thawed and proof in a retarder at temperature in the range of 32-46 degree is inherent in the Freyn et al dough because it is the same dough containing the same ingredients as claimed. Furthermore, the limitation of “ the dough can proof at retarder condition” is not a positive limitation; it is reciting what the dough can do, which is similar to intended use which does not determine the patentability of the product. The claims are directed at an unproofed frozen dough containing the recited ingredients and Freyn discloses such dough and the method of making the dough as recited in claim 12.

Claims 3,4,6,9,18-19, 21- 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freyn et al.

Freyn et al do not disclose encapsulated basic active, the raw specific volume as claimed and the use of fresh crumbled yeast .

Encapsulated leavening agent is well known in the art as exemplified in the Moder et al reference submitted by applicant. It would have been obvious to one skilled in the art to use encapsulated basic agent when desiring to prevent the action between the leavening acid and leavening base until baking time. It would also have been obvious to use fresh crumbled yeast when desiring a fresh ingredient. As to the specific volume, this parameter can vary depending on the several factors including the amount of leavening agents used, the type of product, the mixing time, the proportions of ingredients used etc.. It would have been obvious to one skilled in the art to determine the appropriate raw specific volume depending on the type of product and the specific texture and taste wanted. Such determination is within the skill of one in the art through routine experimentation.

In the response filed 3/11/08, applicant submits a 132 to show that the Freyn et al dough cannot be proofed at retarder conditions as claimed. The declaration is not found to be persuasive. Firstly, the formulation shown on page 2 is not commensurate in scope with the claims. The formulation contains specific amounts of ingredients which are not in the claims except for the amount of yeast. Thus, the showing is not commensurate in scope with the claims. The formulation shown on page 3 is only one example of the Freyn et al reference; thus, it is not enough to make a general conclusion of the Freyn et al disclosure. On page 4-5, the declaration shows the difference between the volume of the inventive formulation and the Freyn et al formulation and concludes that the Freyn et al dough does not proof at temperature of 40 and 45 degree F. However, such showing is not persuasive. The Freyn et al dough

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does proof because the volume changes from 0 hour to 24 hours. The volume is difference from the comparative formulation; however, there is no evidence shown in the declaration that the difference results only from the retarder condition. The volume of dough product can be affected by different factors such as the amounts of leavening agents used, the mixing time, the proportion of different ingredients ect..

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lien T Tran/
Primary Examiner, Art Unit 1794

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